

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**SHUNDA WILKINS and DAVID
WATSON, on behalf of themselves and
all others similarly situated,**

Plaintiffs,

vs.

SIMMONS BANK,

Defendant.

Case No. 3:20-cv-00116-DPM

NOTICE OF SUBSEQUENT DEVELOPMENTS

Plaintiffs hereby notify the Court of two subsequent developments that may assist the Court in ruling on Plaintiffs' Motion for Class Certification (ECF No. 91) and Defendant's Motion for Summary Judgment (ECF No. 79).

First, Plaintiff Shunda Wilkins recently deposited \$545.21 into her Simmons Bank account, bring her outstanding balance to zero (\$0.00). *See* Deposit Slip (Exhibit 1 hereto). That amount consists of the \$510.21 that the Court found the Bank was entitled to as a matter of law (ECF No. 62, p. 2) and the \$35 fee that she is challenging in this case. Ms. Wilkins' payment of her outstanding balance is relevant to Defendant's arguments on summary judgment.

Second, Plaintiffs bring to the Court's attention a recent guidance promulgated by the Federal Deposit Insurance Corporation ("FDIC") in March 2022 regarding the fee assessment practice that is the subject of this litigation. In the FDIC's most recent Consumer Compliance Supervisory Highlights, the regulator addressed the charging of multiple non-sufficient funds fees for items presented multiple times against insufficient funds in the customer's account, stating:

During 2021, the FDIC identified consumer harm when financial institutions charged multiple NSF fees for the re-presentment of unpaid transactions. Some disclosures and account agreements explained that one NSF fee would be charged “per item” or “per transaction.” These terms were not clearly defined and disclosure forms did not explain that the same transaction might result in multiple NSF fees if re-presented. While case-specific facts would determine whether a practice is in violation of a law or regulation, the failure to disclose material information to customers about re-presentment practices and fees may be deceptive.

See Consumer Compliance Supervisory Highlights, p. 8 (Exhibit 2 hereto). This Supervisory Highlight is relevant to the arguments made on class certification and summary judgment.

Dated: May 23, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to all counsel of record.

E. Adam Webb